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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20006

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In the Matter of)
)
Streamlining the Commission's Antenna)
Structure Clearance Procedure)
)
and)
)
Revision of Part 17 of the Commission's)
Rules Concerning Construction, Marking,)
and Lighting of Antenna Structures)

WT Docket No. 95-5

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REPLY COMMENTS OF MOTOROLA

R. Michael Senkowski
Katherine M. Holden
Stephen J. Rosen
WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, D.C. 20006
202-429-7000

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REPLY COMMENTS OF MOTOROLA

Motorola, by its attorneys, hereby files its reply comments in response to the Notice of Proposed Rulemaking in the above-captioned docket.¹ As Motorola explained in its opening comments, it generally supports the Commission's proposals to streamline its antenna structure clearance procedure and revise Part 17 of its rules. Motorola's observations on specific proposals and its recommendations for Commission action received support from a number of other commenters, as detailed below. Adoption of the Commission's proposals, modified consistent with these comments, will effectively serve the public interest.

¹ *In the Matter of Streamlining the Commission's Antenna Structure Clearance Procedure and Revision of Part 17 of the Commission's Rules Concerning Construction, Marking, and Lighting of Antenna Structures*, WT Docket No. 95-5 (Jan. 20, 1995) [hereinafter *Notice*]. Opening comments in this docket were due on March 21, 1995.

I. INTRODUCTION AND SUMMARY

The Commission's *Notice* proposes to streamline the antenna structure clearance process by replacing the current licensee and permittee driven procedures with a uniform registration process for structure owners. In addition, the Commission proposes to update and revise Part 17 of its rules to incorporate by reference the most recent regulations of the Federal Aviation Administration ("FAA") for tower marking and tower lighting. Approximately forty parties, including Motorola, submitted opening comments in response to the *Notice*, most of which were generally supportive of the Commission's contemplated streamlining of its tower registration process.

Motorola's opening comments applauded the Commission's efforts to ease the regulatory burden on tower owners and tenant licensees. Motorola specifically addressed a number of the individual issues raised in the *Notice* as well as made recommendations for further improving the processes proposed by the *Notice*:

- Mandating registration only for towers requiring FAA notification;
- Modifying Form 854;
- Requiring tower registrants periodically to renew their registrations;
- Requiring a notification when tower construction is completed;
- Making electronic registration and notification available;
- Setting any fees at reasonable levels;
- Providing all tower registrants with a copy of the FAA Advisory Circulars;
- Requiring applicants and licensees to provide only the tower registration number with their applications;

- Processing radio license applications as much as possible until a pending tower registration application is granted;
- Adopting transition procedures and an amnesty program to encourage submission of the most accurate site coordinate information available and to avoid penalizing licensees due to existing errors in site location data; and
- Coordinating the procedures adopted in this proceeding with the forfeiture policy docket.

Motorola's positions and recommendations were reiterated in opening comments filed by many members of the telecommunications industry. In particular, a number of parties concurred with Motorola about the importance of a transition mechanism that takes into account both the improvements in positioning determination technology (thus resulting in more accurate data) and inadvertent errors in coordinate information, often repeated in numerous Commissions filings.

In addition, consistent with its own comments, Motorola concurs with the view of many parties that the Commission should ensure that the revised procedures do not in any way slow down tower and antenna construction and thus service implementation. To this end, Motorola urges the Commission to explore the feasibility of several proposals noted in the opening comments, including possible adoption by the FAA and the Commission of a single numbering system for antennas, consolidated processing by the FAA and the FCC, and permitting construction of towers prior to issuance of the FCC registration number where the FAA has approved the tower facility. Adoption of these or other proposals, after due consideration, would appear likely to expedite the ability of licensees to deploy new services, reduce regulatory burdens, and continue to ensure the maintenance of air safety.

II. THE RECOMMENDATIONS MADE BY MOTOROLA WERE WIDELY SUPPORTED IN THE OPENING COMMENTS

A. Registration Should Be Required Only for Towers Subject to FAA Notification

In its opening comments, Motorola suggested that, because the Commission's goals in this proceeding include increased aviation safety *and* a decreased regulatory burden on tower owners and users, only antenna structures requiring FAA notification should be subject to the proposed registration process. Most parties addressing this issue agreed with Motorola's position.² Perhaps American Personal Communications best identified the cost/benefit ratio of requiring the registration of all 500,000 antenna structures in the United States³ by stating that the costs of such a requirement would be "staggering," while the benefits would be "minuscule."⁴

Several parties did support registering all U.S. antenna structures,⁵ but failed to address the immense problems in implementing this approach and the tremendous costs

² See Association of Federal Communications Consulting Engineers Comments at 4; Bell Atlantic Mobile Systems, Inc. Comments at 3; Industrial Communications & Electronics, Inc. Comments at 3-4; Pacific Bell, Nevada Bell and Pacific Bell Mobile Services Comments at 3-4; Pagenet, Inc. Comments at 17-18; Personal Communications Industry Association Comments at 4; Smith and Powstenko & The Empire State Building Comments at 3-4; Southwestern Bell Mobile Systems, Inc. Comments at 7; UTC Comments at 9-10.

³ See Notice at ¶ 8.

⁴ American Personal Communications Comments at 3.

⁵ Aeronautical Charting Division, NOAA Comments at 2; Capital Cities/ABC, Inc. Comments at 13; Dutch Hill Tower Antenna Systems, Inc. Comments at 2; FAA Comments at 3.

that would have to be shouldered by licensees, tower owners, and the Commission.⁶ These costs were explicitly discussed by Dean Brothers Publishing, which has developed a private directory of antenna supporting structures.⁷ In its comments, Dean Brothers first noted the expense and difficulty inherent in creating a comprehensive registry of tower sites,⁸ and then suggested that the Commission could best expend its limited resources by registering only those antennas that pose a hazard to aeronautical navigation, rather than attempting to register all of the nation's communications towers.⁹ Clearly, in an imperfect world with limited resources, registration should be limited only to those towers and similar facilities subject to FAA notification requirements.

B. The Registration Procedure Must Be as Simple and as Streamlined as Possible

Motorola firmly believes that the tower registration process will serve the Commission's goals best if the process is designed to be as simple and streamlined as possible while still promoting air safety. This fundamental belief guided Motorola in its views on a number of issues raised in the *Notice* and also led Motorola to suggest

⁶ Motorola recognized the potential value of a comprehensive national registry but balanced this view with the realities of the current regulatory and economic environments -- leading to the conclusion that registration of all tower facilities cannot be justified at this time. See Motorola Comments at 8-9.

⁷ Fryer's Site Guide.

⁸ Dean Brothers Publishing Comments at 4.

⁹ *Id.* at 6-10.

the adoption of additional refinements to the registration requirements. These perspectives likewise were reflected in other opening comments.

First, Motorola proposed to modify Form 854 to request whether the proposed tower construction involved any action having a significant environmental impact, and suggested that licensees be allowed to rely upon the tower owner's representations as to whether a facility falls within or beyond the scope of Section 1.1307(a) of the Commission's Rules. Other parties also supported revising Form 854 to add questions concerning compliance with Section 1.1307(a) or urged the Commission to find other mechanisms for informing tower owners of their obligations to comply with the National Environmental Policy Act and the National Historic Preservation Act.¹⁰

Second, in order to enhance the accuracy of the Commission's records, Motorola requested that the Commission require tower owners to renew their registrations every ten years. Such a renewal requirement enjoyed broad support, with most parties suggesting renewal periods of either five¹¹ or ten years.¹² The FAA specifically noted that, "[t]he advantage [of renewal] is that the owners will be reminded of their obligations and everything should be verified."¹³

¹⁰ *E.g.*, Dean Brothers Publishing Comments at 18; GTE Service Corp. Comments at 22-23.

¹¹ Aeronautical Charting Division, NOAA Comments at 2; Bell Atlantic Mobile Systems, Inc. Comments at 3; Pagenet, Inc. Comments at 16.

¹² American Mobile Telecommunications Association, Inc. Comments at 7; Capital Cities/ABC, Inc. Comments at 12; Dean Brothers Publishing Comments at 15-16; Dutch Hill Tower Antenna Systems, Inc. Comments at 2; Smith and Powstenko & The Empire State Building Comments at 2; UTC Comments at 9-10.

¹³ FAA Comments at 3.

Third, as another means of ensuring database integrity, Motorola suggested that registrants be required to notify the FCC upon completion of construction of a tower. GTE Service Corp. specifically endorsed adoption of such a requirement.¹⁴

Fourth, Motorola was joined by a number of parties in urging the Commission to allow tower owners to register electronically. This suggestion enjoyed broad popularity because of the efficiency and time savings it is expected to bring to the registration process.¹⁵

Fifth, like Motorola, several parties requested that, in the event a tower registration fee is required, the fee be reasonable enough not to deter owners from registering their towers.¹⁶

Finally, AirTouch Communications, Inc. and U S West NewVector Group, Inc. suggested, as did Motorola, that the Commission forward copies of the pertinent FAA

¹⁴ GTE Service Corp. Comments at 18-19 (in order to minimize confusion and give tower owners more time to register, proposed Section 17.45 should be modified to be consistent with FAA construction notification requirements, thereby requiring FCC notification 48 hours prior to antenna structure construction and within 5 days of completion of construction).

¹⁵ American Mobile Telecommunications Association, Inc. Comments at 7; American Petroleum Institute Comments at 7; Association of Federal Communications Consulting Engineers Comments at 4; AT&T Comments at 8; Dutch Hill Tower Antenna Systems, Inc. Comments at 2; GTE Service Corp. Comments at 17-18; Industrial Communications & Electronics, Inc. Comments at 6; Industrial Telecommunications Association, Inc. Comments at 4-5; Pacific Bell, Nevada Bell and Pacific Bell Mobile Services Comments at 2; Pagenet, Inc. Comments at 15-16; Southwestern Bell Mobile Systems, Inc. Comments at 6; UTC Comments at 8.

¹⁶ Dean Brothers Publishing Comments at 16; Dutch Hill Tower Antenna Systems, Inc. Comments at 2; GTE Service Corp. Comments at 17-18; Pagenet, Inc. Comments at 16-17.

Advisory Circulars to tower registrants in order to enhance the level of compliance with the FAA's tower marking and lighting requirements.¹⁷

Motorola also made two recommendations designed to speed and simplify the licensing process for radio station licensees that must rely upon tower registration by other entities. Initially, licensees should be required to submit only a tower registration number with their applications, rather than submitting a copy of the full Form 854. This position was also endorsed by the Association of Federal Communications Consulting Engineers, which noted that it did not appear to be necessary to provide the Commission with information already contained in its tower database (*e.g.*, location) when an application involved an existing structure.¹⁸

In addition, the Commission should continue to process radio license applications while the related tower registration applications are pending. This proposal was seconded by Industrial Communications & Electronics, Inc., which suggested that the Commission should consider adopting a procedure comparable to the manner in which it issues temporary and conditional license permits. Under such a scheme, temporary registration numbers could be issued and authorizations granted to licensees proposing a facility that has been approved by the FAA and for which a Form 854 has been filed, but not yet processed.¹⁹

¹⁷ AirTouch Communications, Inc. and U S West NewVector Group, Inc. Comments at 3-4.

¹⁸ Association of Federal Communications Consulting Engineers Comments at 3.

¹⁹ Industrial Communications & Electronics, Inc. Comments at 4-5. As discussed below, commenters also suggested that the Commission should not require issuance of
(continued...)

Adoption of these elements of the registration program will increase the simplicity, understandability, and usefulness of the proposed new procedures. As a result, the Commission can expect a higher degree of compliance with the proposed requirements and a more effective and complete database.

C. The Transition Process Must Be Carefully Planned and Acknowledge the Realities of Existing Data on Tower Site Locations

In its opening comments, Motorola urged the Commission to craft transition rules to encourage entities to provide updated and corrected location data for their antenna structures. As the record in this proceeding reflects, much of the extant site data is inaccurate due to no fault of the tower owners or licensees.²⁰ It is unrealistic to expect tower owners to supply more accurate data absent assurances that they and their tenant licensees will not be penalized for doing so.

This need for transitional rules is one that cuts across all segments of the communications industry. For example, as Motorola noted in its opening comments, the protected coverage area of cellular licensees,²¹ the finder's preference program,²²

¹⁹(...continued)
a registration number as a prerequisite to tower construction if the FAA already has passed on the proposed facility.

²⁰ See, e.g., Motorola Comments at 14.

²¹ 47 C.F.R. § 22.911(a).

²² See *Amendment of Parts 1 and 90 of the Commission's Rules Concerning the Construction, Licensing, and Operation of Private Land Mobile Radio Stations*, 6 FCC Rcd 7297, 7297 (1991).

and the required separations for SMR transmitters²³ all hinge upon transmitter tower location information. Broadcasters likewise noted potential problems in certain broadcast services.²⁴ Because the submission of updated data can have profound effects upon the rights and obligations of all Commission radio and broadcast licensees, Motorola suggested a transitional, amnesty program that would protect incumbent licensees from forfeitures, loss of license, or other loss of service area or similar rights as a result of the submission of newer, more accurate location data. This program would be equitable to existing licensees while at the same time providing maximum incentives for the compilation of a more accurate database on tower facilities subject to FAA notification requirements.

Other commenters also urged the Commission to adopt an organized framework for the correction of inaccurate tower siting data. For example, the Cellular Telecommunications Industry Association ("CTIA") urged the Commission, in order to correct errors in the FCC database and encourage tower owners to provide corrected site data, to adopt a "safe harbor" provision.²⁵ CTIA further requested that licensees be expressly protected against forfeitures for tower "relocations" that occur as a result of obtaining and submitting corrected site location information.²⁶ A radio licensee,

²³ See 47 C.F.R. § 90.621(b).

²⁴ See, e.g., Capital Cities/ABC, Inc. Comments at 14-15 (requiring licensees to change coordinates could create conflicts in the rules regarding the distances between FM stations, 47 C.F.R. § 73.207, and earth stations, 47 C.F.R. § 25.151(c)(6), and the instructions for FCC Form 313).

²⁵ Cellular Telecommunications Industry Association Comments at 6-7.

²⁶ *Id.*

EMI Communications, commented that, "[p]enalizing owners for the submission of corrected data would be particularly unfair, given that the draft instructions to the proposed FCC Form 854 constitute the first comprehensive and service-blind articulation by the FCC (or by the FAA) of standardized antenna structure measurement and survey guidelines."²⁷

Similarly, from the broadcasting perspective, the National Association of Broadcasters ("NAB") and Nationwide Communications, Inc. recognized that "[d]iscrepancies in geographical coordinates are likely to occur . . . for a number of reasons,"²⁸ and that the Commission must formulate a means by which it can process new location data without prejudicing existing licensees. Nationwide noted that, because "the correction of small deviations in station authorizations would have no practical significance," the tower siting data "set forth in the tower registration [should] be given preference," and licensees should be permitted "to modify their station authorizations to reflect the tower registration specifications by the filing of a letter or other informal notification."²⁹

This proceeding has the potential to provide the Commission with an historic opportunity to purge its records of inaccurate tower structure location data.³⁰ Without

²⁷ EMI Communications Corporation Comments at 6.

²⁸ National Association of Broadcasters Comments at 5.

²⁹ Nationwide Communications Inc. Comments at 5. *See also* Capital Cities/ABC Inc. Comments at 9-10.

³⁰ The public interest rationales for compiling correct site data are so obvious that they do not require enumeration. The Commission must reject, however, the effort of
(continued...)

the industry's full and uninhibited cooperation in providing newer and more accurate information, however, this opportunity will be lost. Therefore, Motorola urges the Commission to plan the appropriate transition rules in advance of the development of potential problems and to ensure that those policies do not penalize entities for the provision of accurate tower location data. Such action will most effectively serve the public interest.

**D. Action in This Proceeding Should Be Coordinated With
the Forfeiture Policy Statement Proceeding**

Motorola concluded its opening comments by suggesting that the FCC coordinate the rules promulgated in this proceeding with the concurrent forfeiture policy statement proceeding.³¹ Specifically, Motorola requested that the Commission unequivocally state that tower owners are the entities primarily responsible for tower maintenance, and that licensees are only secondarily liable. Further, Motorola suggested that the sum total of licensees' secondary liability for any forfeitures should never exceed the amount that otherwise would be imposed on the tower owner as the

³⁰(...continued)

Kelley Communications, Inc. ("Kelley") to inject its finder's preference disputes into this rulemaking proposal. Kelley's proposals are both unrealistic and obviously self-interested. Moreover, Kelley has misrepresented the nature of Commission action in prior cases involving the accuracy of site location information and application of the finder's preference policies.

³¹ *In the Matter of the Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules To Incorporate the Forfeiture Guidelines*, CI Docket No. 95-6 (Feb. 10, 1995).

primarily responsible entity. Motorola reiterated these comments in its reply filed in the forfeiture docket.³²

The commenting parties overwhelmingly urged the Commission to ensure, consistent with the statutory authority, that tower owners be held primarily liable for tower lighting and marking violations.³³ Among other things, interested parties emphasized that the Commission should ensure that tower owners not be able to escape their duties by relying on the secondary responsibility of the licensees on a tower. In addition, current licensees pointed out that, in many circumstances, the licensee tenants have no legal ability to correct lighting or marking deficiencies even in the face of the tower owner's refusal to do so.³⁴ Finally, commenters agreed with Motorola that the

³² Reply Comments of Motorola Inc., CI Docket No. 95-6 (filed Apr. 17, 1995).

³³ Alltel Mobile Communications, Inc. Comments at 2; American Mobile Telecommunications Association, Inc. Comments at 9-10; American Petroleum Institute Comments at 3; AT&T Corp. Comments at 4; Bell Atlantic Mobile Systems, Inc. Comments at 1; CBS, Inc. Comments at 2; Dean Brothers Publishing Comments at 4-5; GTE Service Corp. Comments at 7-10; Industrial Telecommunications Industry Association, Inc. Comments at 3; Mitchell Energy and Development Corp. Comments at 3; Mobile Telecommunication Technologies Corp. Comments at 5; Nationwide Communications Inc. Comments at 5; Onecomm Corp. Comments at 2; Southwestern Bell Mobile Systems, Inc. Comments at 1-2; Sprint Corporation Comments at 2; UTC Comments at 4-5, 13-14; Vernon Telephone Cooperative, Inc. Comments at 2; Wireless Cable Association International, Inc. Comments at 2.

³⁴ E.g., Alltel Mobile Communications, Inc. Comments at 2-3; Capital Cities/ABC, Inc. Comments at 4-6; GTE Service Corp. Comments at 7-10; Industrial Communications & Electronics, Inc. Comments at 8-9; Mobile Telecommunication Technologies Corp. Comments at 5; Pagenet, Inc. Comments at 7-9.

total fines assessed against licensees should never exceed the amount that would have been levied on the tower owner.³⁵

**III. THE COMMISSION SHOULD ENSURE THAT ITS
REGISTRATION PROCESSES DO NOT INTERPOSE
ANY DELAY IN TOWER CONSTRUCTION, ANTENNA
INSTALLATION, OR TRANSMITTER TURN-ON**

Motorola's opening comments reflected its concern that implementation of the proposed registration process in fact "provide a reasonable speed of service"³⁶ and not unduly delay either application processing or the ability of licensees to initiate operations at a particular site. Numerous commenters reiterated the importance of ensuring that the registration procedures not become a further roadblock to the ability of licensees to meet customer service needs in an effective, competitive manner.³⁷ To

³⁵ Mitchell Energy and Development Corp. Comments at 3; Personal Communications Industry Association Comments at 3.

³⁶ Notice at ¶11.

³⁷ E.g., American Mobile Telecommunications Association, Inc. Comments at 4-5; American Personal Communications Comments at 1-2; Industrial Communications & Electronics, Inc. Comments at 4-5; Southwestern Bell Mobile Systems, Inc. Comments at 4-5, 8-9. These concerns about delay are enhanced by a recent action taken by the Wireless Telecommunications Bureau. Specifically, the Commercial Wireless Division has indicated that it will now apply the following policy:

Any applicant that does not provide a required FAA clearance will be notified by the Commission staff of this deficiency and permitted sixty days to correct it. If at the end of this sixty day period the clearance is not obtained and submitted to the Commission, the application will be dismissed for failure to prosecute in accordance with Section 22.128(c) of the Commission's Rules. . . . This will affect only those applicants who have failed to obtain clearance from the FAA prior to filing an application

(continued...)

that end, the comments contained several suggestions, discussed below, for avoiding the insertion of an additional delay factor. Motorola urges the Commission to give careful consideration to these proposals and to take appropriate steps to streamline the processes for approval of towers and ensuring that such facilities do not pose a hazard to air safety. Indeed, the Commission should seek to eliminate as much as possible any overlapping activities between itself and the FAA, and instead employ a single regulatory process governing review of communications towers.

Consistent with this view, Motorola endorses the suggestions that the Commission and the FAA cooperate to the greatest degree practicable to minimize the duplication of effort by the FCC, the FAA, and tower owners and licensees. Thus, the Commission and the FAA should explore a unified processing of tower notification and registration requests. Micro TV, Inc., for example, noted that "[a]ll of the salient information which the Commission proposes to require tower owners to file is already on file with the FAA and with the FCC."³⁸ Consolidation of the two processes to permit timely review of and action on tower proposals could greatly ease the regulatory burden associated with tower registration while not in any way impairing the promotion

³⁷(...continued)

FCC Public Notice, "Commercial Wireless Division Announces the Clarification and Streamlining of Processing Procedures for the Cellular Radiotelephone Service," Rpt. No. CL-95-72 (Apr. 4, 1995). If a similar policy is applied in the tower registration context, tower owners and licensees would have to obtain FAA and FCC approvals seriatim and not concurrently. The resulting and unnecessary delays in tower construction and service initiation are inconsistent with effectively serving the public interest.

³⁸ Micro TV, Inc. Comments at 1-2.

of air safety. Similarly, if both agencies utilized a single tower notification/registration form and assigned a single identifying number, the regulatory burden on tower owners would be significantly reduced.³⁹

Alternatively, the Commission could permit tower construction to proceed subsequent to FAA clearance but prior to the completion of Commission registration.⁴⁰ In that event, the speed with which communications infrastructure could be developed would be greatly advanced, at no cost to aeronautical safety.⁴¹ The benefits of such regulatory streamlining will be especially profound for new technologies such as personal communications services ("PCS"), which will need to develop massive infrastructure in a short period of time.⁴² As stated by GTE Service Corp., "[t]hese measures [*i.e.* a unified form and commencement of construction prior to FCC registration], if adopted, would minimize the duplication of effort associated with having two agencies regulate the same general area."⁴³

³⁹ Aeronautical Charting Division, NOAA Comments at 2-3; GTE Service Corp. Comments at 2-6; UTC Comments at 5.

⁴⁰ Alltel Mobile Communications, Inc. Comments at 4; GTE Service Corp. Comments at 6; Industrial Communications & Electronics, Inc. Comments at 4-5; Southwestern Bell Mobile Systems, Inc. Comments at 4-5.

⁴¹ The proposal of Industrial Communications & Electronics, Inc. to adopt a conditional licensing approach for the tower registration program would be one method for implementing this policy. *See* discussion *supra* at page 8; Industrial Communications & Electronics, Inc. Comments at 4-5.

⁴² American Personal Communications Comments at 1-2. *See also* Pacific Bell, Nevada Bell and Pacific Bell Mobile Services Comments at 4 (expressing concern that delays in obtaining antenna registration numbers will delay PCS build-out).

⁴³ GTE Service Corp. Comments at 6.

This resource sharing and consolidation of regulatory review will be beneficial to all concerned. Not only will such cooperation save the time and resources of the regulated community, it will also save the time and resources of the regulators. Motorola accordingly agrees with other members of the communications industry in suggesting that inter-agency cooperation be considered and implemented as part of the promulgation of final rules in this proceeding.

IV. CONCLUSION

Motorola again applauds the Commission's efforts to lighten the regulatory burden on the communications industry through the streamlining of the Commission's tower clearance procedures. Motorola further notes the widespread support for its suggestions of ways in which the Commission can slightly modify its otherwise excellent plan for regulatory relief. Finally, Motorola respectfully suggests that the Commission and the FAA undertake a cooperative effort to consolidate and streamline

all aspects of communications tower regulation over which they share concurrent jurisdiction.

Respectfully submitted,

MOTOROLA

By: Katherine M. Holden
R. Michael Senkowski
Katherine M. Holden
Stephen J. Rosen
WILEY, REIN & FIELDING
1776 K Street, N.W.
Washington, D.C. 20006
202-429-7000

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